



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Eastern Technical Enterprises, Inc.
File: B-236249
Date: October 25, 1989

DIGEST

1. Where invitation for bids requires a bid guarantee, bidder's submission of a Standard Form 24 Bid Bond, indicating that a cashier's check is being furnished, absent the actual check, is inadequate and renders the bid nonresponsive, and may not be corrected after bid opening.
2. Contracting officer acted properly in publicly opening all bids received under invitation for bids.
3. Protest that an agency representative gave protester erroneous oral advice at bid opening is untimely where first raised in protester's comments on the informal conference and agency report.

DECISION

Eastern Technical Enterprises, Inc., protests the rejection of its bid under invitation for bids (IFB) No. DTMA92-89-B-90204, issued by the Maritime Administration, Department of Transportation, for towing, repairs, and cargo gear inspection of the SS Cape Alava. Maritime rejected Eastern's bid as nonresponsive because it was not accompanied by a bid guarantee as required by the solicitation. Eastern argues that because it presented a cashier's check as its bid guarantee immediately after bid opening, its bid was responsive.

We deny the protest in part and dismiss it in part.

The IFB required each bidder to provide a bid guarantee in an amount equal to 20 percent of the total bid price, and stated that failure to furnish a bid guarantee may be cause for rejection of the bid.

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Eastern sent its bid to the agency by Federal Express, with its bid arriving prior to the bid opening. When Eastern's bid was opened, the contracting officer found that while Eastern had submitted a Standard Form 24 Bid Bond (SF 24), which provided that a cashier's check was being submitted as the bid guarantee, it had not included the actual cashier's check. After bids were opened, Eastern's representative presented a cashier's check in the proper amount as its bid guarantee. The contracting officer accepted the cashier's check without comment. The agency subsequently rejected Eastern's low bid as nonresponsive, on the basis that a bid guarantee was not submitted with the bid at the time of opening.

Eastern first argues that the SF 24, which was included with its bid, considered in conjunction with the presentment of a cashier's check immediately after bid opening, should have been considered an acceptable bid guarantee. We disagree. According to the clause at Federal Acquisition Regulation (FAR) § 52.228-1, which was incorporated into the solicitation, a bid guarantee must be "in the form of a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States." We do not think that a signed bond form which states that a cashier's check is being furnished, absent the actual check, is an acceptable bid guarantee under the cited standard.

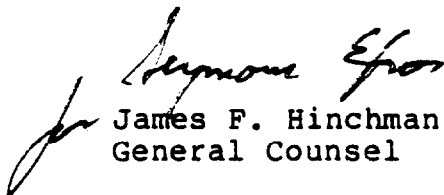
Since a bid guarantee is a material requirement which must be met at the time of bid opening, HTP Enters., Inc., B-235200, Apr. 27, 1989, 89-1 CPD ¶ 418, a bid that does not comply with the solicitation requirement for a bid guarantee must be rejected as nonresponsive. FAR § 14.404-2(i); HTP Enters., Inc., B-235200, supra. Since responsiveness must be determined at bid opening, Eastern's attempt to make the bid responsive after bid opening by submitting the cashier's check, even though immediate, cannot be considered by the agency. Id.

Eastern also argues that if its bid was going to be rejected as nonresponsive, its bid price should not have been made public at the bid opening. We disagree. The contracting officer was required to publicly open all bids received. FAR § 14.402-1(a). Additionally, once bids are opened, interested parties are permitted to examine the bids submitted. FAR § 14.402-1(c).

Eastern argues for the first time in its comments on the agency report that an agency representative at the bid opening told Eastern's representative that it was not necessary for Eastern to submit the cashier's check unless and until its bid was found to be low. We will not consider Eastern's argument on this issue as it was not timely raised. Protest issues like this one must be raised not later than 10 working days after the basis of protest is or should have been known. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1989). In order to be timely the issue should have been raised in Eastern's initial protest filed on July 20. Moreover, we have reviewed the affidavits of Eastern's representative and the agency's representative concerning what was said prior to and at bid opening. Because of the conflicting versions as to what was said, it is not clear that Eastern's representative was told not to submit the cashier's check. In any event, it does not appear that Eastern's representative was in any way prevented from submitting the cashier's check had he chosen to do so.

Eastern finally argues that it should be reimbursed for its protest and bid preparation costs, and should be paid interest on the cashier's check for the period the agency held it while making the responsiveness determination. Since we have found the agency's action proper, Eastern's claim for reimbursement of its protest and bid preparation costs is denied. 4 C.F.R. § 21.6(d) and (e); Cantu Servs. Inc., B-219998.9 et al., Mar. 29, 1989, 89-1 CPD ¶ 306. Eastern's claim for payment of interest is also denied since there is no authorization for the payment of interest in such cases. Ultraviolet Purification Sys., Inc.--Claim for Bid Protest Costs, B-226941.3, Apr. 13, 1989, 89-1 CPD ¶ 376.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel